

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ISRAEL SANTIAGO-LUGO,

Defendant.

Criminal No. 95-029 (JAF)

O R D E R

Before the court is Defendant Israel Santiago-Lugo's motion to correct his criminal judgment pursuant to Rule 36 of the Federal Rules of Criminal Procedure. Docket Document No. 3180. The government has responded. Docket Document No. 3181.

Rule 36 provides that at any time, a court may correct clerical errors in a judgment or order; however, Rule 36 does not permit defendants to relitigate the merits of their cases. FED. R. CRIM. P. 36. Here, all of Defendant's arguments relate to the merits of his case. See Docket Document No. 3180. Therefore, they are inappropriate for a Rule 36 motion.

Even if we were to construe Defendant's motion as a motion for habeas corpus, Defendant's claims would still fail. See 28 U.S.C. § 2255 (2006). Defendant has already filed a habeas petition in this case. Docket Document No. 2582. In order to bring a second or successive habeas motion, Defendant must show the existence of either (1) newly-discovered evidence that would establish his innocence by

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1 clear and convincing evidence; or (2) a new rule of constitutional
2 law, made retroactive to cases on collateral review. 28 U.S.C.
3 § 2255. Defendant has shown neither factor; therefore, we cannot
4 consider his motion on the merits as a § 2255 motion.

5 For the foregoing reasons, we **DENY** Defendant's motion, Docket
6 Document No. 3180.

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this 26th day of December, 2007.

9 s/José Antonio Fusté
10 JOSE ANTONIO FUSTE
11 Chief U. S. District Judge